The Solicitors' Journal

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Current Topics.

Sir Henry Fielding Dickens.

NOT long, unfortunately, has the late Common Serjeant of the City of London been spared to enjoy the rest and leisure which he had so well earned by years of work, first, at the Bar, and then on the City bench, and the sense of loss is heightened by the circumstances of his death, this being occasioned by his being knocked down by a motor-cycle not far from his own house, and suffering injuries which proved fatal. Few public men enjoyed the admiration and confidence of his fellows as did Sir HENRY. Something of this was, no doubt, due to the fact that he bore an honoured name, one, indeed, to conjure with, but to this he added his own personal charm and dignity. At the Bar he was a forceful advocate; while on the bench he ever sought to do justice in a kindly spirit; he was patient —a great asset in a judge—and he was sympathetic, ever ready to temper justice with mercy if the circumstances warranted the exercise of the latter quality. To many of his friends, and doubtless to himself, it was a matter of regret that he did not reach the High Court bench, a position which he would worthily have adorned, but, again, it was proved that the race is not always to the swift or the battle to the strong, and we believe that he was happy in the judicial position which he attained and upon which he shed fresh lustre. The sympathy of the whole profession, and indeed, of hosts beyond it, will go out to Lady DICKENS and her family in their sore bereavement.

Conveyancing Counsel of the Court.

BY the death of Mr. W. A. PECK, who little more than a year ago was appointed one of the conveyancing counsel of the court, a gap is made in the ranks of this select band of eminent conveyancers to whom is entrusted by the court the settlement of the most intricate problems as to titles that call for practical solution. To be chosen to fill this position is regarded, and rightly regarded, as a recognition of the distinction of the recipient in the special domain of conveyancing, although possibly few of those appointed exhibit the enthusiasm of Mr. DUVAL, the eminent conveyancer of whom Lord CAMPBELL tells us that, when asked on one occasion whether he did not find it exceedingly irksome to be continually poring over musty deeds and abstracts of title, answered, that sometimes he might find it so, but ever and anon, he was cheered by coming across "a brilliant deed," or the like enthusiasm of a later denizen of Lincoln's Inn, Mr. A. B. DIXON, who is said to have regarded an abstract of title as the finest achievement of human intelligence. We may smile at what some may think as misplaced zeal, but it has been by such men that the realm of the conveyancer has been adorned and distinguished. Apparently, conveyancing counsel of the court in an official sense, date from 1852, when, by the Court of Chancery Act of that year, the Lord Chancellor was empowered to nominate a number of conveyancing counsel in actual practice who should have practised as such for ten years upon whose opinion the court or any judge might act.

Law Reform.

WHATEVER criticisms may be directed against the Business of the Courts Committee, no one can suggest that it is inattentive to its duties. On 20th December it issued a second interim report, containing no less than sixteen major recommendations for radical alterations in procedure as well as a number of minor recommendations. The abolition of the separate Probate, Divorce and Admiralty Division, and the assignment of its probate work to the Chancery Division, and the divorce and admiralty work to the King's Bench Division, is the most startling of the innovations proposed. In divorce the question as to who is to have the custody of the children should continue to be determined by the court granting the decree *nisi*, but the terms upon which the custody is handed over to one of the spouses and the access which is to be allowed the other, as well as the alteration in those terms and questions of permanent alimony which may involve an alteration in the marriage settlement should be entrusted to the Chancery Division. There is a further ancillary suggestion that a Judge in Divorce should be selected to take particular charge of divorce work. It is also proposed that one of the judges of the King's Bench Division should have particular charge of the admiralty and commercial work. Another drastic alteration recommended is the abolition of the Divisional Courts and the taking of all appeals from the county courts and "inferior" courts on the civil side to the Court of Appeal. The Court of Appeal itself should contain as one of its Divisions the Court of Criminal Appeal. On a vacancy occurring among the Lords Justices no new Lord Justice should be appointed, but the number of existing High Court Judges should be increased by one, and the Lord Chancellor should consult the Lord Chief Justice and the Master of the Rolls with regard to the personnel who should be called upon to do appellate work. Appeals to the House of Lords should only be by leave of the Court of Appeal or the House of Lords. Some of the suggestions as to circuit work are that the North and South Wales circuits should be united, on the Midland Circuit no civil business should be taken at Warwick, on the Oxford Circuit no civil business should be taken at Worcester, while on the Western Circuit Wells should not be visited for civil business. On

the Northern Circuit it is proposed to abolish the assizes at Appleby. The Committee recommend no change in the jurisdiction of the county courts, but the Committee is of the opinion that the power of remitting cases from the High Court to the county court should extend to cases of £200, instead of £100, as it stands at present. The jurisdiction of county court registrars, however, should be increased from £5 to £10. Courts of quarter sessions should be required to hold sessions shortly before the date fixed for assizes. Lord WRIGHT, in a memorandum attached to the report, states his opinion to be that the reconstitution of the circuits does not go far enough, while in another memorandum Mr. Justice TALBOT differs from the parts dealing with divorce reform and the Court of Appeal. The Committee is clearly dealing with controversial matters in its latest report, but it is to be hoped that this fact will not deter those responsible for putting the reforms into operation from taking bold and prompt steps to execute all those which will make for greater expedition and economy in the administration of justice.

Public Performance of Gramophone Records.

THE conclusion at which Mr. Justice MAUGHAM arrived in *Gramophone Co. Ltd.* v. *Stephen Carwardine & Co.*, on 14th December (77 SOL J. 914), that a public performance of a gramophone record constitutes an infringement of the copyright owned by the maker of the record by virtue of s. 19 of the Copyright Act, 1911, is one which not only is eminently satisfactory to the gramophone companies, but also, as his lordship observed, results in no injustice to other parties. The action was in the nature of a test case, arrangements having been made by the plaintiffs to meet the defendants' costs. The record in question was of an overture by AUBER, played by the London Symphony Orchestra, and the label contained a warning that it was only to be used for private performance. The infringement complained of was the performance by the defendants of the record in their tea and coffee rooms in Bristol, without the plaintiffs' consent. The defendants admitted that the existence of a special copyright owned by the maker of a record or perforated roll under s. 19 did not derogate from the right of the original owner of the musical work performed, if it still existed. His lordship said that the section was a difficult one to construe owing to the fact that it was originally framed for the purpose of conciliating conflicting interests, and added that some weight should be attached to the phrase "the person who was the owner of such original plate at the time when the plate was made shall be deemed to be the author of the work." Having examined the cases cited in the course of argument, his lordship observed that BUCKLEY, L.J., in *Monckton* v. *Pathé Freres Pathéphone Ltd.* [1914] 1 K.B. 395, refused to deal with the point, while, although certain phrases in the judgments of the Court of Appeal in *Thompson* v. *Warner Bros. Pictures Ltd.* [1929] 2 Ch. 308, seemed to indicate a view favourable to the defendants, there was nothing definite, and his lordship did not feel himself bound by the latter case. Lastly, Mr. Justice LOWE in an *obiter dictum* in *Australian Performing Right Society* v. *3 D.B. Broadcasting Co. Ltd.* in the Supreme Court of Victoria on 20th March, 1929, expressed a view which coincided with the conclusion arrived at by Mr. Justice MAUGHAM. It will be remembered that the question in *Performing Right Society Ltd.* v. *Hammond's Bradford Brewery Ltd.* [1933] W.N. 112; 77 SOL. J. 286, as to whether a public performance of a broadcast musical work by means of a receiving set was an infringement of the copyright of the original composer was decided by Mr. Justice MAUGHAM on the interpretation of s. 1 (2) (*d*) in favour of the owners of the copyright in the original musical works under consideration. It seems strange that the question of the right of public performance of gramophone records should arise for the first time at this comparatively late date, but it appears that the proceedings in this case were begun before those in the *Performing Right Society's case*, although the decision was later. The protection of the new decision extends to the makers of the record, so that the satisfactory consequence ensues from both decisions that not only the original composer, but also the maker of any subsequent record, are protected from infringement by means of a mechanical public performance.

The Development of the Law.

IN a recent address to the Edinburgh University Law Faculty Society, Lord BLACKBURN of the Scots Bench took as his subject "The Development of the Law," meaning thereby, not the development of legal principles in the course of the centuries, but the effect of the rapid changes in social conditions upon the actual work of the practitioner. How many and far-reaching those changes have been, more particularly during the last century, was brought out with striking effect by the learned lecturer. Dealing first with the law of entail, whose strictness was at one time regarded as an impregnable part of the land law of Scotland, much more so than was the case in England, where, at a very early date, the ingenuity of the profession found a way of escape from its fetters, he showed how ideas on the subject had undergone a radical change, with the result that Parliament, after making serious inroads on the principle of entails, at last in 1914 passed an Act forbidding the creation of any new entail after that date, and rendering the breaking of existing entails a matter of the utmost simplicity. Passing from the law relating to land, and pointing out that "casualties," a characteristic feature of the old feudal law, are doomed to speedy extinction, thus removing another fruitful source of litigation in the past, he showed how, in turn, legislation as to roads, railways, mines, workmen's compensation, have added to and then, to some extent, taken from the lawyer's activities. With Parliament taking every subject as its province it might almost seem as if nothing would be left upon which the lawyer could exercise his skill, but there is still balm in Gilead, for, as Lord BLACKBURN pointed out, there will continue to be actions for damages for injury due to the fault of others, there will still be wills to be prepared for others "in terms so clear that no one could mistake what was the testator's intention, and the criticism of the same wills by others to demonstrate that the language used has been so vague as to be capable of two conflicting constructions." These and many other matters will always provide work for the profession, and then, as another distinguished Scots judge, Lord MACMILLAN, wittily said not long ago: "It is consoling to reflect that the increasing intervention of Parliament in the life of the people by means of imperfectly-framed statutes will, at any rate, save many lawyers from swelling the ranks of the unemployed."

Sale of Poisons under the New Pharmacy Act.

WITH the coming into force on New Year's Day of the Pharmacy and Poisons Act, 1933, a large number of persons without any technical knowledge of chemistry will be authorised to sell poisonous substances not used as medicine, with the result that these dangerous things will secure a wider circulation and more extensive use than hitherto. Whether any evil results to the nation at large will follow this enactment remains to be seen. The natural presumption is that where the facilities for obtaining dangerous things are extended the public user will increase proportionately; and if anything could ever be said to be inevitable it is safe to prophesy that the number of poisonings, fatal or otherwise, accidental or suicidal, will tend to increase. Crime, as a result of the use of poison, will probably remain static; the would-be poisoner knows only too well the danger to himself of being found out in the use of even the most secret and mysterious poison under the microscopical investigations for which men like Sir BERNARD SPILSBURY have made themselves famous.

The Solicitors Act, 1933.

THE Solicitors Act, 1933, which received the Royal Assent on the 28th June, 1933, comes into operation on the 1st January, 1934. At some risk of being accused of unduly repeating ourselves (the Bill and the Act having been frequently discussed in previous issues), we feel, nevertheless, that this further summary is called for, if only to act as a general reminder.

Owing to the fact that no Rules under s. 1 of the Act have, as yet, been approved by the Master of the Rolls, the Act does not materially affect solicitors until the rules are in operation, with the exception of s. 8, which is known as "the bankers' section," but here, again, probably no material change will take place on and after the 1st January in the case of those solicitors who are already keeping separate accounts and who may have identified to their banker which is, in fact, the clients' account.

While it is true that from the 1st January, 1934, bankers are not required to make any inquiry or be deemed to have any knowledge of the right of any person to money paid by a solicitor into his own account, there is a proviso to the effect that nothing in the sub-section shall relieve a bank from any liability or obligation under which it would be apart from the Act. Precisely what this means is perhaps not clearly defined, but it would appear to leave a bank with exactly the same responsibility regarding money in their hands which they know to belong to someone else as before the Act came into operation.

It may well be that many solicitors will open a client account at the beginning of the New Year, and the terms and conditions upon which that account will be kept by the bank will probably be a matter of arrangement between the banker and his customer, having regard to the terms of cl. 2 of s. 8 of the Act, which is believed to be in accordance with established practice, but whether it is so or not, the proviso preserves any right existing at the time when the first rules made under the Act come into operation.

At present it is not known when the rules will come into operation, but it is thought that the date is still many months ahead.

The Act is described in the preamble as being an Act to amend the law relating to solicitors by providing for the making and enforcement of rules as to the keeping of accounts for clients' moneys and other matters of professional conduct.

Section 1 gives power to the Council of The Law Society to make rules, which must be approved by the Master of the Rolls before they become operative.

Certain rules the Council must make; other rules they may make.

Rules which the Council must make are:—

(*a*) as to the opening and keeping by solicitors of accounts at banks for clients' moneys; and

(*b*) as to the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid by them, for or on account of their clients; and

(*c*) empowering the Council to take such action as may be necessary to enable them to ascertain whether or not the rules are being complied with.

The rules which the Council may make are for regulating in respect of any other matters the professional practice, conduct and discipline of solicitors.

At present the Council have drafted rules only under the compulsory provisions; they have not yet put forward any rules under the optional powers given to them.

Section 2 provides for cases of non-compliance with the rules. Any person may make a complaint; the complaint if found to be substantial is heard before the Disciplinary Committee and that committee may strike the offending solicitor off the rolls, or suspend him, and may in addition impose a penalty not exceeding £500, the penalty going to the Crown. In practice, generally speaking, complaints will be made to the Council. The Professional Purposes Committee will then investigate the complaint and not until that committee has decided that there is something really to complain about will they allow the case to go to the Disciplinary Committee.

Section 3 empowers the Registrar of Solicitors to refuse to grant a practising certificate to any solicitor who has not paid any penalty which may have been imposed upon him or who has not paid any costs he may have been ordered to pay.

Section 4 exempts public officers from the provisions of the Act.

Sections 5 and 6 exempt solicitors who are Clerks of the Peace, clerks to county councils or who are in whole time employment as officers of a local authority or of statutory undertakers.

Section 8 is known as the bankers' section.

Sub-section (1) provides that, subject to certain conditions a bank shall not be under any liability to inquire whether or not money paid by a solicitor into his own account belongs to him or to a client, and that the bank shall not incur any liability if client's money is paid by the solicitor into his own account.

Sub-section (2) provides that a bank cannot look to a client's money account as security for, or for reimbursement of, any loan or overdraft granted to the solicitor.

Section 9 gives the short title of the Act, provides that The Solicitors Act, 1932, and this Act shall be construed together as one Act, and may be cited together as The Solicitors Acts, 1932 and 1933, and gives the date on which the Act shall come into operation as the 1st January, 1934. The Act does not extend to Scotland or Northern Ireland.

Majority Decisions and Unanimity.

[CONTRIBUTED.]

IN the recent case of *Perrott & Perrott Limited* v. *Stephenson* (77 SOL. J. 816), a resolution having been passed by two of the three governing directors of the company appointing two additional directors, the company sought declarations that the appointment was invalid and that in the articles of association the words "the opinion of the governing director or directors" meant the unanimous opinion of all the governing directors. Judgment to that effect was given by Bennett, J., but the case has a wider interest by reason of the question raised here and in a long series of previous cases—when does the majority in a body prevail, and when is unanimity required?

It appears to have been argued for the defendants that the rule of corporation law applied, namely, that when a duty is delegated to a body of persons they can act at a meeting by a majority. Bennett, J., held that this rule did not apply to articles of association of companies incorporated under the Companies Act, and was limited to cases in which the duty performed by a corporation was a duty of a public nature. There is an abundance of authority for the distinction. The earlier cases are deserving of review, as they have been cited in important decisions of more recent date.

In *Attorney-General* v. *Davy* (1741), 2 Atk. 212, the Lord Chancellor (Lord Hardwicke) said: "It cannot be disputed that wherever a certain number are incorporated, a major part of them may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act, though nothing be mentioned in the charter of the major part. This is the common construction of charters." In that case a charter of King Edward VI incorporated twelve persons, of whom three were to choose a chaplain for a parish, with the consent of the inhabitants. In *R.* v. *Beeston* (1789), 3 T.R. 592, it was decided that under a statute which enabled the churchwardens and overseers,

with the consent of a major part of the parishioners, to contract for providing for the poor, it was not necessary that all the churchwardens and overseers should concur, but that the contract of a majority of them would bind the rest. Lord Kenyon (p. 595) said: "If we were to determine otherwise, the inconvenience would be so great as to make it necessary for the legislature to interfere and pass another law. *This is very different from the case of trustees in settlements*, who are generally chosen by the different branches of the family, in which case it is necessary that they should all concur in every act in order that each may protect the interest which he was appointed to guard." In this case the distinction between public and private functions is beginning to be made. *Withnell* v. *Gartham*, 6 T.R. 398, followed in 1795, when Lawrence, J., observed: "In general it would be the understanding of a plain man that, where a body of persons *is to do an act*, a majority of that body would bind the rest."

The leading case is the well-known and often cited *Grindley* v. *Barker* (1798), 1 Bos. and Pul. 229: "If a power *of a public nature* be committed to several, who all meet for the purpose of executing it, the act of the majority will bind the minority. A condemnation by four out of six triers of leather appointed under 1 Jac. I, c. 22 (the whole number being met for the purpose of trying) must be considered as the condemnation of all six." Per Eyre, C.J., at p. 237; "that part of the law of corporations [i.e. as stated by Lord Hardwicke in the case in Atkyns] applies in this case." The same judge rejected the jury rule of unanimity (p. 238). Rooke, J., at p. 241, said: "*The authority given to the triers in the present instance . . . is committed to them for the advancement of public justice and as a public trust.*" This case was adopted in *Curtis* v. *Kent Waterworks* (1827), 7 B. & C. 332, and applied in *Wilkinson* v. *Malin* (1832), 2 Cr. and J. 655. It has also the distinction of having been twice followed by the Judicial Committee of the Privy Council.

Section 142 of the British North America Act, 1867 (30 & 31 Vict. c. 3), provided that: "The division and adjustment of the debts, credits . . . of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada." One of the arbitrators had retired, and the matter was referred by His Majesty to the Judicial Committee. Lord Selborne said in that case: "the view which prevails that unanimity is necessary when power is given to three persons does not depend on anything peculiar to arbitrations, it surely would be a general view subject to control either by something expressed in the instrument or by something to be collected from the nature of the power and the duty to be performed under it . . . *Is not one reason for the distinction that in the public interest it is necessary that the thing should be decided?*" Their lordships followed *Grindley* v. *Barker*, and their answers were given in accordance with this view. The Judicial Committee, in the matter of a Reference as to the Irish Boundary Commission [1924] advised His Majesty very clearly in the same sense. Article 12 of the Irish Treaty made provision for the appointment of a Boundary Commission consisting of three persons, one to be appointed by the Government of the Irish Free State, one by the Government of Northern Ireland, and one (to be chairman) by the British Government. Their lordships had to answer, as a supplemental question: "If a Commission is duly constituted . . . composed of three persons, whether . . . in the event of disagreement the vote of a majority will prevail?" Their answer was as follows:—

> "If three Commissioners had once been appointed, then, although in private arbitrations unanimity is necessary, it is otherwise when the matter to be determined is of public concern. This was settled so long ago as 1798 in the case of *Grindley* v. *Barker*, where Chief Justice Eyre says: 'I think it is now pretty well established that where a number of persons are entrusted with powers not of mere private confidence, but in some respects of a general nature, and all of them are regularly assembled, the majority will conclude the minority and their act will be the act of the whole.' This case was followed by Lord Chancellor Cairns, Lord Selborne and several other members of the Judicial Committee in the matter of an arbitration between the Province of Ontario and the Province of Quebec, where the matter was referred by His Majesty to the Judicial Committee . . . These authorities seem to their lordships conclusive. They have no doubt that this is a matter of public interest and not a matter of merely private concern between the parties concerned and they therefore answer that . . . if once the three appointments had been made, a majority would rule."

At the hearing on the Reference of 1924 it was suggested that unanimity on the part of the three Commissioners would be necessary for a valid determination. On the other hand, in *Perrott & Perrott* v. *Stephenson* it was argued that a majority would prevail. In both cases the decision was arrived at by a consideration of the question—Was the duty to be performed a duty of a public nature or not?

Costs.

TAXING MASTERS' DISCRETION.

It is well known that the taxing masters have a wide discretion in the taxation of costs, and it may perhaps be of interest to trace the scope of this discretion and observe how it works out in practice.

Rule 27 (29) of Ord. 65, it will be remembered, gives the taxing master discretion to allow all such costs, charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice or defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over caution, negligence or mistakes or by payment of special fees to counsel or special charges or expenses to witnesses or other persons or by other unusual expenses. This sub-section of the rules seems fairly clear and the latter portion thereof, from the words "save as against the party who incurred the same," applies only to taxations as between the solicitor and his own client.

The costs of the solicitor are to be based on the fees set out in the lower scale of Appendix N of the Supreme Court Rules (see Ord. 65, r. 8), and the fees set out therein are to be regarded as the irreducible minimum (see *Price* v. *Glinton*, 95 L.T. 710). The taxing master, however, has power under r. 27 (29) referred to above, to increase the fees set out in the appendix, notwithstanding that certain of such fees are expressed "not to exceed" the sums therein mentioned (see *McIver Ltd.* v. *Tate Steamers* [1902] 2 K.B. 184). Moreover, the taxing master is not strictly bound by the fees set out in Appendix N, for he has power, which he may exercise by reason of the discretion vested in him by r. 27 (29), to allow fees which are not even provided for in Appendix N at all (see *Burroughs Wellcome & Co.'s Trade Marks* (1904) 22 R.P.C. 164). This seems to be somewhat inconsistent with the direction contained in r. 9 that the taxing master may only allow fees on the "higher scale" of Appendix N, when he is directed so to do by the judge or court. The position really amounts to this: the taxing master has discretion to allow fees on the higher scale, if, in his discretion, he thinks the work done merits such fees, but they are to be regarded merely as increased allowances on the lower scale and not allowances on the higher scale, which seems to be something in the nature of a distinction without a difference.

An important point to bear in mind here is that in determining what allowance is to be made for a particular item the taxing master is to take into consideration the state of

affairs at the time when the work was done, and is not to base his allowance solely on the ultimate effect or utility of that work (see *Bartlett* v. *Higgins* [1902] 2 K.B. 230). Thus, it may be that work is done which, owing to subsequent developments in the case, is of no practical use at the trial, but this does not mean that no allowance is to be made for that work, even on a taxation between party and party (see *Bartlett* v. *Higgins, supra*, where the costs of an examination before an examiner were allowed, although the depositions were not afterwards used).

This discretion of the taxing master is again referred to in r. 27 (38), which provides that all fees or allowances which are discretionary are to be allowed at the discretion of the taxing master, who is to take into consideration the other fees and expenses allowed to the solicitor and counsel, the nature and importance of the cause or matter, the amount involved, the interest of the parties, and all other circumstances. Since, following the decision *In re Ermen* [1903] 2 Ch. 156, all fees in Appendix N are discretionary, and since further, it has been held that sub-s. (29) of the rule gives the taxing master discretion to allow all reasonable fees, whether provided in Appendix N or not (see *Burroughs Wellcome & Co.'s Trade Marks, supra*), it seems that this further direction contained in sub-s. (38) is redundant.

Turning back now to sub-s. (20) of r. 27, we find that the taxing master is vested with yet further discretion. The first part of this sub-section of the rule provides that the court or judge may direct that the costs of any proceeding which is improper, vexatious or unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is caused by misconduct or negligence, shall be disallowed, and the sub-section then goes on to provide that in such a case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties, and it further provides that in any case where such questions have not been raised before and dealt with by the court or judge, it shall be the duty of the taxing master to look into the same for the purpose of disallowing or granting such costs as are occasioned by the causes previously set out. It will be observed that in the absence of any special direction by the court or judge, the taxing master is vested with power to deal with the questions forming the subject-matter of the sub-section, and in determining these questions he must exercise his discretion. Not only may the opposite party object to the allowance of such items in the successful party's bill as have arisen by reason of the causes set out in the sub-section, but he may, in addition, carry in a bill of costs himself in respect of the extra work in which his solicitor has been involved as a result, and, notwithstanding the absence of specific directions from the court or judge, the taxing master is bound to exercise his discretion and adjudicate upon the questions involved. Seemingly, no order to tax will be necessary.

In passing, it is not without interest to trace the effect of this sub-section of the rule on the costs of a claim in an Admiralty matter, where some of the items have been disallowed. Not only is the opposite party entitled to object to the costs of attempting to prove such items, but he is also entitled to carry in a bill in connection with the extra work in which he was involved in contesting those same items. Reference was made in our last article on "Costs" to an interesting case on this point.

It will be observed from the foregoing that the taxing master has almost unlimited discretion, at least on a question of *quantum*, for, as was observed in the case of *Ogilvie* v. *Massey* [1910] P. 243, "the taxing master is the person whose duty it is to decide questions of *quantum*, and it is not right for the judge to interfere in such a matter."

Mr. Dillon Ross-Lewin Lowe, solicitor, of the Temple' left estate of the gross value of £37,296, with net personalty £36,232.

Company Law and Practice.

Directors Contracting with the Company.

I HAVE from time to time in this column touched upon the very important branch of company law which deals with the relation of the directors of a company to the company itself. A few weeks ago I called attention to the fact that the exact status of directors in relation to the company is not exactly determined. They have been variously described as "trustees for the company," as "agents of the company," and as "managing partners." However that may be, the position of a director who contracts with the company is, since the Act of 1929, made perfectly clear in one particular respect. I refer to the provisions of s. 149 of the Act, which is a new section and which imposes upon directors a statutory obligation, the breach of which renders them liable to a fine not exceeding £100. There is no need for me to set out the terms of the section here, as the majority of practitioners are more than familiar with its provisions. It is sufficient to remember that it provides that it is the duty of a director who is in any way, either directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at the meeting of the board at which the contract is first taken into consideration.

Now the provisions of s. 149 must always be borne in mind when considering the articles of the company which deal with directors contracting with the company. There is usually some article in a form similar to that of Art. 72 of Table A. The provisions of this kind of article provide that the office of a director shall be vacated if, *inter alia*, he is, either directly or indirectly, interested in any contract with the company or participates in the profits of any contract with the company. There is a proviso however that the director shall not vacate his office by reason of such an interest, so long as he has declared the nature of his interest in accordance with s. 149, but that he shall not vote upon the contract, or upon any matter arising out of it, and if he does so his vote shall not be counted.

Stopping there for a moment, we might notice that there has been considerable discussion upon the meaning to be attributed to the words "interested in." As Lord Halsbury, L.C., said in *Cory* v. *Harrison* [1906] A.C. 275, "it is absolutely impossible to lay down with precision what is or is not comprehended in such words as 'interested in.' You must look at the facts of the particular case and the business meaning of the words." With such an expression of opinion from so eminent an authority it is clear that we are not aided much by judicial decision, and that each individual case must necessarily rest upon its own merits. But if it is once proved that the director was concerned in the contract it matters not at all that no profits were made out of the contract, for the proviso is divisible into two parts; a prohibition against being concerned in the contract, and a prohibition against participating in the profits: see *Star Steam Laundry* [1913] W.N. 39.

In the case of private companies the proviso that no director may vote on a contract in which he is interested is very often varied, and the directors are frequently empowered expressly to vote in such circumstances. This is because in a private company the number of directors is often very limited, and it might well be impossible to obtain a quorum for a board meeting if two or more of the directors were interested in a particular contract. But it should be remembered that if the directors are in fact forbidden to vote, it is no use dividing up the voting upon the contract into two or more separate resolutions if the resolutions are all really concerned with one transaction: see *Re North Eastern Insurance Coy.* [1919] 1 Ch. 198, to which I have had occasion to refer recently when discussing the problems of quorums at board meetings. However, whether the articles allow the directors to vote or

not, the statutory obligation imposed upon them by s. 149 must be complied with, or the penalty may be incurred.

If the company has an article in the form of Art. 72 of Table A, and a director vacates his office if he is interested in or participates in the profits of a contract with the company, a director who may have vacated his office under the article is entitled to be heard by the board. In *Turnbull* v. *West Riding Athletic Club* [1894] W.N. 4, the director failed to disclose the precise nature of his interest at the board meeting at which the contract was discussed, although he abstained from voting. After the contract had been performed a board meeting was held, of which he had no notice, and a resolution was passed declaring that he had vacated the office of director. Kekewich, J., refused to declare that he was still a director, but granted him an injunction against the company restraining the board from excluding him from board meetings. The court held that it was not fair or proper, or within the meaning of the particular article, that a man should be ejected from the board of directors without being given an opportunity of justifying his conduct. The fair construction of the article is not that the director's seat would be vacant by the mere non-disclosure of the interest without any further steps being taken, but that something more must be done to render the seat vacant; and natural justice demanded that the director should have an opportunity of saying what occurred to him on his own behalf.

When one considers for a moment that a director stands in a fiduciary position in relation to the company it is tolerably clear that the courts are not going to allow him to make a profit derived from employment of the company's property or funds, unless the company has signified its assent. In the words of Lord Hatherley, L.C., in *Imperial Mercantile Credit Association* v. *Coleman*, 6 Ch. App. 367, the rules of the court "lay down firmly that no director of a company can, in the absence of any stipulation to the contrary, be allowed to be a partaker in any benefit whatever from any contract which requires the sanction of the board of which he is a member . . . The company have a right to the services of their directors, whom they remunerate by considerable payments; they have a right to their entire services, they have a right to the voice of every director, and to the advice of every director in giving his opinion upon matters which are brought before the board for consideration." That passage from the Lord Chancellor's judgment puts the matter very clearly, and beyond doubt. In that case, to the facts of which I do not propose to refer here, Lord Hatherley held that the articles contemplated that a director might have an interest in business brought by him to the company. It is interesting to note that the decision was reversed in the House of Lords not upon the construction of the article, but upon the ground that the declaration of interest which was made was not sufficiently explicit.

The principle of this class of cases illustrating the rule of equity which prevents a person in a fiduciary capacity from making a profit, does not apply to a case in which a person who is intended to be a director of a company when formed has contracted with the owners of a business which the company takes over: see *Albion Steel & Wire Coy.* v. *Martin*, 1 Ch. D. 580. To put the principle once more in another form the director cannot put himself in the dual position of being both seller and buyer.

Mr. Turton Chatterton, retired solicitor, of Sheffield, left estate of the gross value of £19,305, with net personalty £11,679. He left to the Lord Mayor, Aldermen and Citizens of Sheffield, a silver cup and cover to augment the ceremonial plate at Sheffield Town Hall, an oil painting, "A Welsh Landscape near Bettws-y-Coed," by H. G. Peel, an oil painting "Lavinia" (Titian's daughter) by Carl de Calzada, a water-colour drawing "Ferry on Thames near Cookham" by Chas. Bramwhite (1858), and a needlework picture "by my mother 1829-1907) *circa* 1840," with the request that such pictures may be exhibited in such art gallery in Sheffield as the Corporation decide.

A Conveyancer's Diary.

Equitable Charge followed by Legal Mortgage to Third Party. Vesting of Legal Estate.

I PROPOSE to consider this week the effect with regard to the disposition of the legal estate in land which a mortgagor charges to a bank, in what is quite a usual form, and subsequently creates a legal mortgage by demise in favour of a third party.

It will be best to take an example. A, being the estate owner in fee simple, deposits the deeds with a bank as security for an advance. A executes in favour of the bank a memorandum of deposit by deed in which he gives to nominees of the bank a power of attorney (expressed to be irrevocable) to convey the legal estate to any purchaser from the bank and also declares himself to be a trustee of the legal estate for the bank, and gives power to the bank at any time to remove him from the trusteeship and to appoint one or more trustees in his place.

Subsequently A creates a legal mortgage by demise in favour of B, who registers his mortgage as a puisne mortgage under the L.C.A., 1925, s. 10 (1), Class C (i).

A then absconds.

The bank desire to sell the property, and the question arises what is the best way to proceed, and particularly as to how the legal estate in B is to be got rid of.

As between the bank and B it is not a question of priorities of equities for B has the legal estate in a term of years, and at first sight it might appear that the bank, having an equitable estate only at the date of the demise to B, is not in a position to sell free from that estate. That certainly puzzled me at first, and perhaps some of my readers may have also found the same difficulty.

Now, by virtue of the mortgage, the bank may proceed in two ways to realise its security. First, it may remove A from the trusteeship and appoint new trustees in his place. A vesting declaration, if not expressed in the appointment, will be implied under s. 40 (1) of the T.A., 1925. That vesting declaration will beyond doubt vest the legal estate in fee simple in the new trustees, but will it divest from B the legal term of years which his mortgage created?

The question just put was I think answered by the decision in *London & County Banking Co.* v. *Goddard* [1897] 1 Ch. 642.

The facts in that case were, for present purposes, the same as those in the example which I have given, except that the mortgage to the subsequent incumbrancer (B) was by conveyance of the fee simple. There was no doubt that the subsequent incumbrancer had notice of the charge to the bank. The bank had by deed removed the mortgagor from the trusteeship and appointed new trustees in his place. The deed of appointment contained the usual vesting declaration.

North, J., held that the vesting declaration was effective to vest the legal estate in the new trustees.

In the course of his judgment the learned judge said: "What effect the vesting declaration might have had if the legal estate had been conveyed to him" (the subsequent incumbrancer) "without notice of the pre-existing charge, I do not express any opinion upon at present, because it is perfectly clear that Joseph Goddard" (the subsequent incumbrancer) "did know of the deposit and charge given to the bank; he knew of the deed of charge and was affected with notice of its provisions. He must be taken to have known that the person from whom he derived his title had declared himself a trustee for a mortgagee to whom he had given the power to appoint new trustees, and therefore to make a declaration vesting the legal estate in them; and therefore Joseph Goddard could not take the legal estate otherwise than subject to the trust in the deed of charge. In my opinion therefore the declaration in the deed appointing new trustees did operate to vest the legal estate in the persons nominated by the bank."

It follows, of course, that in the case which I have supposed the legal term vested in B would become divested by reason of a vesting declaration expressed or implied in a deed removing him from the trusteeship and appointing new trustees, provided that B had notice of the charge to the bank at the date of his mortgage.

It does not seem to have been decided whether, in such a case, the vesting declaration would have the same effect if the subsequent incumbrancer had no notice of the prior charge when he took his mortgage. It is, of course, hardly to be expected that any such case could arise, because the deeds being with the bank any person advancing money on mortgage must (if he makes proper enquiries) become aware of the bank's charge, and would be deemed to have notice of it if he failed to make enquiry for the deeds and insist upon knowing by whom they were held and why.

There is another method which is provided for in the charge to the bank and is perhaps to be preferred to that of appointing new trustees in place of the mortgagor. That is, by the exercise by the nominees of the bank of their right under the power of attorney to convey the legal estate to any person to whom the bank may have contracted to sell the mortgaged property.

I think that a purchaser would be safe in accepting a conveyance in that way, relying upon s. 126 (1) of the L.P.A., 1925.

The sub-section enacts:—

> "If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—
>
> "(i) The power shall not be revoked at any time, either by any thing done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donee of the power;
>
> "(ii) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power or the death, disability or bankruptcy of the donor of the power, had not been done or happened;
>
> "(iii) Neither the donee of the power nor any purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power or of the death, disability or bankruptcy of the donor of the power."

Now, in the example which I have given, the mortgagor executed a mortgage to B without the concurrence of the bank. The mortgage to B was something "done by the donor of the power without the concurrence of the donee of the power," therefore, a purchaser is protected under all three of the clauses of the sub-section.

It is probably better to proceed in that manner if for no other reason than that no question then arises as to the subsequent incumbrancer having notice of the prior charge, unlikely as it is that such a case could arise. Another advantage from the purchaser's point of view is, that he will obtain the qualified covenants for title implied by reason of the donor conveying (by his attorneys) as beneficial owner, although probably the covenants would not be worth anything.

On the whole, therefore, the second method appears to be preferable to the first, but either will be effective to divest from the subsequent incumbrancer the legal estate vested in him by his mortgage.

Whilst on this subject I may say that I do not understand why banks adhere to the old forms of equitable charge instead of making use of a charge by way of legal mortgage. I can understand that a mortgage by demise may be (and usually is) preferred to such a mortgage, but I should have thought that an equitable charge with its elaborate provisions for the mortgagor holding the legal estate as a trustee with power to the mortgagee to replace him and the power of attorney to nominees of the bank, was less satisfactory, if only because of its complication, than a charge by way of legal mortgage, which is so simple and, although it does not create any legal estate for a term of years, gives to the mortgagee all the protection and confers on him all the rights and powers which he would have had if the mortgage had been by demise.

For my part, I have never been able to appreciate the reason for the introduction into the L.P.A. of two different methods of mortgaging freeholds. One would have sufficed, and that might just as well have been a charge by way of legal mortgage. The mortgage of freeholds by demise was an innovation which we could well have done without, but I suppose that it will continue to be generally used in preference to the alternative and more simple form.

Landlord and Tenant Notebook.

The Meaning of "Repairing Lease."

"I DO not find that the term 'repairing lease' has a meaning as a term of art; nor do I find that the Court of Chancery has defined what is a repairing lease," said Erle, C.J., in *Easton* v. *Pratt* (1869), 2 H. & C. 676. The expression is, of course, in fairly common use in the estate market, and if disputes between intending landlords and tenants or between vendors and purchasers have not led to litigation, the reason is probably that it is a descriptive phrase used only in the course of preliminary negotiations, and that parties are usually *ad idem* on the question of liability to repair before they have agreed or disagreed on other points. But in two cases in which testators have left property in trust with powers to grant repairing leases the question of the scope of the authority has been before the courts; and as in each case the decision of the court of first instance was reversed, the appellate tribunal favouring the more liberal construction, we are not without authority on the point.

In the case cited above, Sarah, Abigail and Mary Easton were left the premises for their joint lives and had power to grant twenty-one-year leases at a rack rent, with no premium, on building or repairing leases for sixty-one years. Mary, the survivor, granted a forty-year term to the defendant's assignor, who covenanted that he would, when and as often as need should require, well and sufficiently repair, uphold, support, paint, maintain, amend, etc., with all necessary and needful reparations, cleanse, etc. He also covenanted to repair on notice. On Mary's death three years later, the remaindermen, being dissatisfied, sued for ejectment. It was found by an arbitrator that part of the premises had been foundrous when the lease was made. The Court of Exchequer agreed that the lease did not satisfy the power; Bramwell, B., and his colleagues considered that the words of the will called for more than the common covenant, which does not oblige lessees to the lessee to amend defects caused by time in the substantial fabric of the building. But the Exchequer Chamber reversed this judgment, Erle, C.J., expressing himself as mentioned at the commencement of this article.

The position in *Truscott* v. *Diamond Rock Boring Co.* (1888), 20 Ch. D. 251, C.A., was to all intents and purposes similar, and one can only account for Chitty, J.'s decision by pointing out that *Easton* v. *Pratt* was not cited to him, and that it does not seem to have been present in the mind of the learned Mr. Dart, whose opinion was sought in the course of the proceedings. These were, in form, for arrears of rent, damages for non-repair, and specific performance of an agreement for a lease. The agreement had been made under a power created by will, which authorised the trustees to demise or lease, or by agreement in writing to agree to demise or lease, to any person who shall improve or repair the premises or covenant or agree to improve or repair the same, or shall expend or

agree to expend such sum in improvements as shall be adequate, etc. Early in June, 1875, the plaintiff and defendants were in negotiations which ended when the former wrote the company a short informal letter, saying his solicitor was too busy to get on with the lease, and asking if the terms were agreed as follows: rent £130 for seven years, lessors' option to break at three years on giving six months' notice, lessors to pay taxes and rates except water rate, rent to commence on quarter-day, lessee to do necessary repairs; and next day the plaintiff let the defendants into possession, giving them the title-deeds so that their solicitor should draft the lease. No lease was made. Three years' later the defendants asked the plaintiff to renew a floor; after some discussion, this was done at the defendants' expense. Some time after, the defendants appear to have given six months' notice to quit, on the footing that they were yearly tenants; hence these proceedings. Judgment was given for the plaintiff for rent and for damages for disrepair and specific performance was ordered, but when title was investigated, the Chief Clerk, after consulting Mr. Dart, reported that the agreement did not comply with the power. Chitty, J., agreed, and it was in the course of the appeal that *Easton* v. *Pratt* was first mentioned, and then by Jessel, M.R. In his judgment, the Master of the Rolls called the power badly drawn, full of unnecessary verbiage, "and, as so often happens in instances to which that remark applies, it is deficient in the material part, so that everyone who has dealt with the case has found it difficult to say what it means." The word "necessary" (in "necessary repairs") was not material, for if repairs were wanted at all they were necessary: and so on. Indeed, the affair was not a very happy one from the viewpoint of the legal profession; the draftsmanship of the will was poor, the solicitor acting for the intending landlord was remiss, the opinion of conveyancing counsel was incorrect, and the case was decided by reference to an authority not discovered by those appearing for the litigants.

In fact, both courts of first instance in the above cases were misled by the importance attached to an older authority, *Doe d. Dymoke* v. *Withers* (1831), 2 B. & Ad. 896, in which an ordinary covenant to repair was held not to satisfy a power to grant leases in which tenants should covenant to new-build or effectually rebuild *and* repair; the essential difference being, I think, that between "and" and "or"; though Jessel, M.R., went as far as to doubt the authority of the older case. The testators in the cases discussed above had each said something about rebuilding or building, but their directions merely enlarged the scope of the trustees' authority, and there was certainly no indication that they were to get the same rentals in each case.

Our County Court Letter.

THE LIABILITIES OF HAIRDRESSERS.

(*Continued from* 77 Sol. J. 400.)

In the recent case of *Ellis* v. *Pearce*, at Mansfield County Court, the claim was for £50 as damages for negligence, in the following circumstances: (*a*) on the 24th May, 1933, the plaintiff's hair (which was normally silver grey) had been waved, after which a streak of brown appeared, (*b*) this was alleged to have been caused by the setting lotion used in the waving process, (*c*) the plaintiff therefore refused to have her hair "re-permed," as the defendant quoted a further 15s. The defendant denied negligence, and contended that (1) in October, 1932, the same process had been used, with satisfactory results to the plaintiff, (2) she admitted having previously used a shampoo (containing henna) and marked "for dark-brown hair," (3) this had probably not been properly washed off, so that the heat of the waving would cause the henna to take effect, as no dye had been inadvertently used in the waving. Corroborative evidence was given by an independent hairdressing demonstrator, and His Honour Judge Hildyard, K.C., held that the plaintiff had not made out her case. Judgment was, therefore, given for the defendant, with costs.

FISHERMEN'S RIGHTS OF ACCESS.

The equitable rights of a purchaser (between contract and conveyance) do not include the giving of a notice to quit—as shown by the recent case of *Cull* v. *Raggatt* at Tewkesbury County Court. The claim was for £5, in respect of damage to a fence and osiers, and the counter-claim was for 5s. as damages for trespass. The plaintiff's case was that (1) he and the defendant had been tenants of adjoining plots on the Pull Court Estate, which was put up for auction in December, 1932; (2) in 1924 he had acquired certain fishing rights (which he had let out at 6d. a day), access being gained by the sloping bank to the clay pits; (3) he had also rented the osier beds up to 1927, when the sloping bank of the clay pits was let to the defendant; (4) this strip of land was included (at the auction sale) in lot 81, and he accordingly bought that lot on the 8th December, 1932; (5) on the 24th March, 1933, he gave the defendant three months' notice to quit the disputed strip, of which the plaintiff obtained a conveyance on the 25th March; (6) on the 13th October he erected a fence, which was pulled down by the defendant. The defendant's case was that (1) before the auction he had bought lot 83 (comprising the plot of which he was tenant and also the disputed strip) by private treaty, although completion had not yet taken place; (2) being entitled to permit fishermen to cross the disputed strip, he had therefore demolished the plaintiff's fence. It was contended for the plaintiff that his conveyance (and especially the plan) superseded the conditions of sale, and therefore the defendant had no right to the strip. His Honour Judge Kennedy, K.C., held that the notice to quit (being given before completion) was invalid, and judgment was therefore given for the defendant (on the claim and counter-claim) with costs. It is to be noted that there was no decision as to the ownership of the strip, which was a valuable means of access for fishermen.

Obituary.

Sir H. F. DICKENS, K.C.

Sir Henry Fielding Dickens, K.C., who was for fifteen years Common Serjeant of the City of London, died in hospital on Thursday, 21st December, as the result of an accident, in his eighty-fifth year. He was born in 1849, the sixth son of Charles Dickens, and was educated at Wimbledon School, and Trinity Hall, Cambridge. Called to the Bar by the Inner Temple in 1873, he was appointed Recorder of Deal in 1883, later being transferred to Maidstone. He took silk in 1892, and became a Bencher of his Inn in 1899. Appointed Common Serjeant of the City of London in 1917, he held that office until last October. He received the honour of knighthood in 1922.

Mr. W. E. HARRISON, K.C.

Mr. William English Harrison, K.C., of Fig Tree-court, Temple, died at Hitchin, on Sunday, 24th December, at the age of ninety. Called to the Bar by the Middle Temple in 1867, he joined the South-Eastern Circuit, and took silk in 1897. Mr. Harrison, who had frequently served as a Commissioner of Assize, was a Bencher of the Middle Temple, and was also Chairman of the Bar Council for about six years.

Mr. H. S. POWELL.

Mr. Henry Sydney Powell, solicitor, senior partner in the firm of Messrs. Powell & Young, of Pocklington, Yorks, died on Friday, 15th December, at the age of sixty-nine. Mr. Powell, who was admitted a solicitor in 1887, had been Clerk to the Pocklington and Market Weighton magistrates. He was a Past President of the Yorkshire Law Society.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

The village of Clive, in Shropshire, is supposed to have given its name to the family of George Clive. It was not he who brought it fame, for, going to the Bar, the highest eminence he obtained was to become first a bencher of Lincoln's Inn and later, four years before his death, cursitor baron of the Exchequer. He died unmarried on the 31st December, 1739, but the family went marching on. One of his nephews rose to be a Justice of the Common Pleas and one of his great-nephews attained immortality in history—Lord Clive.

AT THEIR POSTS.

One comforting assurance with which we close the term and the year is that the Lord Chief Justice will be actively with us in the New Year, till death do him part from his duties, since not long ago he declared: "I shall never resign or retire as long as I live." That resolution is in the tradition of the Chiefs. When Lord Tenterden, C.J., already dying, insisted on presiding at the *Mayor of Bristol's Case*, he said: "I have public duties to perform and while it please God to preserve my mental faculties I will perform those duties. Physical suffering I can and will bear." When told that rest would cure him, he said: "My days are numbered, but I will perform my duty to the last." In the end he had to retire to bed, but he followed the notes of the case day by day, and at last it was with the words "Gentlemen of the jury, you are discharged," that he died. More mixed were the motives which kept Lord Denman, C.J., on the Bench after one paralytic stroke from which he recovered had made everyone fear that a second would so deprive him of his faculties as to make him unable to resign. He had an uncomfortable feeling that if he retired Campbell, who had been spreading unpleasant rumours about his incapacity, would succeed him. When he had to leave his post his fears were realised.

GYPSY BIRKENHEAD.

In a lecture on "Gypsy Blood" recently delivered to the Society of Genealogists, reference was made to the late Lord Birkenhead's gypsy descent, and the mental and physical characteristics which he inherited from it. As Lady Eleanor Smith has said, it was never definitely established whether his grandmother was of the race. In the words of his biography, "all that is known is that her name was Bathsheba and that she was said to be of gypsy stock, dark, handsome and temperamental, with brilliant Romany eyes, olive complexion and jetty ringlets." One of the traits cited by the lecturer in corroboration of this theory of his ancestry is his extraordinary love of horses. His life contains an amusing account of his relations with the twenty odd animals which he acquired and kept. "Once a horse had entered his stables, it could do no wrong. If any of them was suffering from any infirmity, the greatest anxiety came over him and many a guest stood in sepulchral silence in one of his loose boxes, feeling that he should remove his hat as he gazed with awe at a sprained tendon. Such accidents were frequent as his horses were always overfed and underworked."

FAREWELL AND HAIL.

From this day, "In Lighter Vein" will cease to be. Under a sort of name and arms clause, it will change its title in order to inherit a wider scope and open up a new set of possibilities. Henceforth it is to be known as "To-day and Yesterday," and grafted on to it will be the additional feature of a complete calendar of legal anniversaries. Nevertheless, though thus removed to larger and more commodious premises, it will remain under the same management as before the change.

Notes of Cases.

House of Lords.

Adelaide Electric Supply Company, Limited *v.* **Prudential Assurance Company, Limited.**

15th December, 1933

CURRENCY—PAYMENT OF DIVIDENDS IN AUSTRALIA—ENGLISH COMPANY—LEGAL TENDER.

This was an appeal from the Court of Appeal affirming a decision of Farwell, J., the appellant being a company registered in England but carrying on business in Australia.

The question raised was whether the respondents, the Prudential Company, who claimed on behalf of themselves and others who were holders registered in the London register of certain preference stock of the appellant company, were entitled to be paid their dividends in England in English legal tender to the full nominal amount of such dividends in sterling without any deduction in respect of Australian exchange, or whether such dividends could be paid in Australia in Australian legal tender, or be paid in England by such an amount in English legal tender as would be equal to the nominal amount of such dividends after deduction in respect of Australian exchange. The facts were not in dispute. Since 1st March, 1931, the company had paid dividends on its stock by warrants to the nominal amount of the dividends payable at the Bank of Adelaide. Farwell, J., gave judgment in favour of the respondents and the Court of Appeal upholding his decision held that the case was covered by *Broken Hill Proprietary Co.* v. *Latham* [1933] 1 Ch. 373. The Adelaide Company now appealed.

LORD WARRINGTON OF CLYFFE in giving judgment said, the general rule in such cases was that monetary obligations were effectually discharged by payment of that which was legal tender in the *locus solutionis*, and unless there was something to take it out of the general rule the question ought to be decided in favour of the appellant Company. The place of payment, therefore, was Australia. The next question was what amount in Australian currency must be paid to satisfy an obligation to pay so many pounds, shillings and pence. After consideration he had come to the conclusion that merely as a unit of account the pound symbolized by the £ was one and the same in both countries, and that the difference in the currencies merely concerned the means whereby an obligation to pay so many of such units was to be discharged. The currency in both countries was now a paper currency and not convertible into gold and was legal tender in each country for any amount. An obligation, therefore, to pay in Australia so many pounds, shillings and pence was effectually discharged by payment there of that amount and no more in Australian currency. If he was right in that opinion questions of exchange were irrelevant inasmuch as the obligations in question were finally discharged by the payment in Australia. In his opinion the appeal should be allowed with costs in that House and below, and *Broken Hill Proprietary Co.* v. *Latham* (*supra*) should be treated as overruled.

LORDS ATKIN, TOMLIN, RUSSELL and WRIGHT agreed.

COUNSEL: *Wilfrid Greene*, K.C., and *J. W. Brunyate*, *Sir Wm. Jowitt*, K.C., *W. P. Spens*, K.C., and *H. S. G. Buckmaster*.

SOLICITORS: *Sydney Morse & Co.*; *Herbert H. Moseley.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Russian and English Bank *v.* **Baring Brothers Ltd. (No. 2).**

Bennett, J. 1st December, 1933.

COMPANIES—FOREIGN CORPORATION—ESTABLISHED IN ENGLAND—DISSOLUTION UNDER FOREIGN LAW—ACTION—STAY OF PROCEEDINGS—WINDING UP—LIBERTY TO APPLY—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 338.

The plaintiff bank, incorporated in Russia in 1910 and established in England in 1915, was dissolved under the laws of Russia prior to the Companies Act, 1929. In 1921 it brought an action to recover certain sums alleged to be money belonging to it, in the defendants' hands. In *Russian and English Bank* v. *Baring Brothers Ltd.* (No. 1) [1932] 1 Ch. 435, Eve, J., made an order staying the action, the bank being treated as dissolved, and subsequently, in *In re Russian and English Bank* [1932] 1 Ch. 663, a compulsory winding up order was made. Under the liberty to apply a motion was now made for the order staying the action to be removed.

BENNETT, J., in giving judgment, said that after the order of Eve, J., the action with regard to which this application was made was dead, because there was no plaintiff and nothing in s. 338 of the Companies Act, 1929, reanimated the plaintiff bank dissolved by foreign law. A corporation which could for some purposes make applications, because it was necessary to wind it up under the section, could not claim to be a party to an action which had terminated in 1932.

COUNSEL: *Sir A. Richardson*, K.C., and *H. W. Parry*; *Gavin Simonds*, K.C., and *Andrewes Uthwatt*; *Stafford Crossman*, for the *Attorney-General*.

SOLICITORS: *F. M. Guedalla & Co.*; *Bischoff, Coxe, Bischoff and Thompson*; *Treasury Solicitor*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Gramophone Company Limited *v.* Stephen Carwardine & Co.

Maugham, J. 13th and 14th December, 1933.

COPYRIGHT—GRAMOPHONE RECORD—WORK IN THE PUBLIC DOMAIN—MAKER'S RIGHTS—RESTRAINING PUBLIC PERFORMANCE—COPYRIGHT ACT, 1911 (1 & 2 Geo. 5, c. 46), s. 19.

The plaintiffs, in 1931, made an original gramophone plate reproducing the overture to "The Black Domino," an opera composed a century ago by a French composer, and admitted in this case to be in the public domain. In February, 1933, the defendants bought a copy of the record on which were the words: "This copyright patented record cannot be sold below the price fixed by the patentees nor publicly performed." Subsequently, the defendants played the record at their tea and coffee rooms. The plaintiffs claimed an injunction to restrain infringement of the copyright.

MAUGHAM, J., in giving judgment, said that the musical work being in the public domain, the question was whether the plaintiffs were entitled to restrain, not its performance *simpliciter*, but the performance recorded on the record before the court. It appeared from the Copyright Act, 1911, s. 19, that a person authorised under sub-s. (2) to make a record had the right to sell it. The special copyright under that section might subsist after the original owner's copyright had come to an end and was not confined to cases where copyright was in the original owner when the record was made. The owner of the plate from which the record was made is deemed to be the author of the work in the sense of the work embodied in the record. There might be several authors each with rights in his own record. Section 19 did not interfere with the original owner's rights under s. 1 of performing the work in public. He could restrain public performances by persons with limited and subordinate copyright under s. 19 co-existing with his. There was an analogy in the relation of the rights of the composer and the adaptor of a musical work. The question here was whether the maker of a record had an exclusive right to its performance in public—assuming there was no copyright in the owner of the original work. It was a reasonable construction of s. 19 that the owner of a special copyright under that section had such a right. No injustice would arise from such a construction and there was considerable objection to the other view. His lordship mentioned *Monckton* v. *Pathé Frères Pathephone, Ltd.* [1914] 1 K.B. 395, and *Thompson* v. *Warner Brothers Pictures, Ltd.* [1929] 2 Ch. 309. The action must succeed and an injunction be granted.

COUNSEL: *Sir S. Cripps*, K.C., and *B. Drewe*; *Morton*, K.C., and *F. Sugden*.

SOLICITORS: *Broad & Sons*; *Hall. Bryden and Chapman*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Tate and Lyle, Ltd. *v.* Hain Steamship Co. Ltd.

Roche, J. 13th December, 1933.

CHARTER-PARTY — SUGAR CARGO — STRANDING — GENERAL AVERAGE CONTRIBUTION—WHETHER DEVIATION FROM CONTRACT VOYAGE.

In this case the plaintiffs, Tate and Lyle, Limited, claimed the return of £9,500, which they had had to deposit with the defendant shipowners, Hain Steamship Co. Limited, to cover a contribution in general average. The plaintiffs had bought a quantity of sugar from a New York firm, and to fulfil their contract that firm had chartered the steamship "Tregenna," belonging to the defendants. By the charter-party the vessel was to load sugar at two ports in Cuba and at one port in San Domingo "as ordered." The New York firm told the shipowners' agents in New York the names of the ports at which they wished the steamer to load. The first Cuban port was Casilda, and the second Santiago de Cuba, and the port in San Domingo was San Pedro de Macoris. The "Tregenna" loaded part of her cargo at Casilda, and was then sent on by the local agents to Santiago de Cuba to load a further consignment there. Meanwhile the shipowners' agents in New York had cabled to the steamer at Casilda directing the master to go on to Santiago de Cuba and then on to San Pedro de Macoris to complete the loading. That cable, however, for some reason, never reached the master, and after loading at the second Cuban port he started on his homeward voyage with a claim for dead freight endorsed on the bills of lading. Shortly after sailing the mistake was discovered and the master was ordered by wireless to proceed to San Pedro de Macoris in San Domingo to complete loading. He did so, and on leaving San Pedro de Macoris the "Tregenna" stranded and was seriously damaged. The cargo of sugar had to be discharged and some of it was lost. The plaintiffs signed an average bond and made a deposit to cover a general average contribution. They admitted that, so far as concerned their sugar which had come from San Domingo, they were liable to contribute in general average, but so far as concerned the sugar which had come from Cuba they contended that the "Tregenna" had deviated from the contract voyage, and in consequence of that deviation the shipowners had lost any right which they might otherwise have had to a contribution in general average. The question of law was whether in the circumstances there had been a deviation from the contract voyage.

ROCHE, J., said that in the circumstances he could not hold that either the starting from Santiago for home or the turning aside to San Pedro de Macoris when the master received the wireless message constituted a deviation. He could not find negligence on the part of anyone in the case except the Cuban postmaster and the lorry driver to whom he entrusted the cablegram for delivery. The charter-party provided that the "Tregenna" was to go to the loading ports "as ordered," but he held that the orders there referred to did not mean orders actually given by the charterers but orders which in fact reached the master, that was, orders which reached those responsible for the management of the ship at the place and time when they could be followed and obeyed. That being so, there was no breach of contract by the defendant shipowners. Judgment for the defendants.

COUNSEL: *Sir William Jowitt*, K.C., and *H. Stranger*, K.C., for the plaintiffs; *Raeburn*, K.C., *Cyril Miller*, and *H. M. Pratt*, for the defendants.

SOLICITORS: *Middleton, Lewis & Clarke*; *Botterell & Roche*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Hobday.

Lord Hewart, C.J., Avory and Branson, JJ.

11th December, 1933.

CRIMINAL LAW—CHARGE OF MURDER—EVIDENCE OF ANOTHER SUBSEQUENT CRIME—RELEVANT TO ISSUE—RIGHTLY ADMITTED.

This was the appeal against conviction of Stanley Eric Hobday, an electrician, aged twenty-one, who was convicted at Stafford Assizes of the murder, on the 27th August, 1933, at West Bromwich, of Charles William Fox, and was sentenced to death.

It was stated on behalf of the appellant that the only substantial ground of appeal was that evidence was wrongly admitted at the trial that Hobday had committed another crime—burglary—after the murder had been committed, a matter which was irrelevant to the issue before the jury, and which, it was said, must have prejudiced him in their eyes.

Lord HEWART, C.J., in giving the judgment of the court, said that the only ground of appeal was that evidence had been admitted which, it was said, ought not to have been admitted because it tended to show that Hobday had been guilty of another crime in the same neighbourhood and about the same time as the murder with which he had been charged. The law on the matter had been stated again and again, and reference need only be made to the judgment of Lord Herschell in *Makin* v. *Attorney-General for New South Wales* [1894] A.C. 57, where he said: "In their lordships' opinion the principles which must govern the decision of the case are clear, though the application of them is by no means free from difficulty. It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts, other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused." It appeared to the court in the present case that the evidence which had been objected to was material as being relevant to the issue. Appeal dismissed.

COUNSEL: *Sir Reginald Coventry*, K.C., and *A. J. Long*, for the appellant; *Earengey*, K.C., and *Ralph Thomas*, for the Crown.

SOLICITORS: *Registrar of the Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume—Part II.

Books Received.

Tithes and Variable Rent-charges. Some Aspects of their History and Development. By P. W. MILLARD, LL.B. 1933. Demy 8vo. pp. vii and (with Index) 79. London: Butterworth & Co. 7s. 6d. net.

Company Case Law. By W. G. H. COOK, LL.D. (Lond.), of the Middle Temple, Barrister-at-Law. Assisted by JOHN W. BAGGALLY, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. 1933. Demy 8vo. pp. xv and (with Index) 182. London: Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

The 1931 *Form of Building Contract.* By WILLIAM T. CRESWELL, one of His Majesty's Counsel. Assisted by C. G. ARMSTRONG COWAN, of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. 1933. Crown 8vo. pp. xi and (with Index) 171. London: Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

Police Law. Third Edition, 1934. By CECIL C. H. MORIARTY, O.B.E., LL.D., Assistant Chief Constable, Birmingham. Crown 8vo. pp. xx and (with Index) 457. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Modern English Punctuation. By REGINALD SKELTON. 1933. Crown 8vo. pp. ix and (with Index) 149. London: Sir Isaac Pitman & Sons, Ltd. 2s. 6d. net.

Courtney Stanhope Kenny, 1847–1930. London: Humphrey Milford, Oxford University Press. 3s. 6d. net.

Re-housing Operations under the Housing Act, 1930. 1933. London: H.M. Stationery Office. 1s. net.

Workmen's Compensation and Insurance Reports. 1933. Part 2. Edited by G. T. WHITFIELD HAYES, Barrister-at-Law. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. Annual subscription, £2 net.

The Law as to Children and Young Persons. By EDWARD J. BULLOCK, M.A. (Oxon), Barrister-at-Law, Inner Temple, Midland Circuit and C.C.C. 1933. Royal 8vo. pp. xxv and (with Index) 206. Supplement, pp. vii and 107. London: Stevens & Sons, Ltd. 15s. net.

Select Cases in the Law of Scotland. By ANDREW DEWAR GIBB, LL.B., Advocate, and of Gray's Inn, Barrister-at-Law. 1933. Demy 8vo. pp. xii and 135. Edinburgh: W. Green & Son, Ltd. 10s. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Notice to Quit—Indefinite Terms.

Q. 2887. A landlord of an agricultural holding received the following letter from his tenant on the 29th September, 1933: —"Trade is bad and I have decided to give up X Farm. I thought of selling this year but my wife is not willing and desires to be here for her life." The landlord has never recognised the wife as a tenant jointly with her husband, and the rent has always been paid by the latter. Does this letter constitute a valid notice to quit?

A. We think it is extremely doubtful and that, having regard to the indefinite language used, should not recommend that it be regarded as a valid notice. We should certainly take the precaution of writing to the tenant to ask him whether his letter was intended to be a notice to quit on 29th September, 1934. It will be observed that at the most the letter only expresses a decision to give up; but at what date is not stated.

Caller at Private House—Injury by Dogs.

Q. 2888. W, being the owner of certain agricultural property which he was desirous of letting, advertised it in a newspaper and received a reply from L, to the effect that L would "be pleased to receive full particulars of the property described in the advertisement." W, to save time and correspondence, decided to go over and see L. On arriving at L's private house he finds a notice board on the front gate, with the words "No admittance" painted thereon. The front door of the house was only a few yards within the gate and W accordingly enters and rings the front door bell. On his doing this, he was attacked by two Alsatian dogs belonging to L, and seriously injured. L subsequently arrives on the scene and made the following remark: "You were lucky not to have the clothes torn off your back." W has now ascertained that the dogs are known in the locality for their ferocity, and that on one occasion they injured a child who was paid some compensation by L, and further, that the postal authorities have affixed a letter box outside the property for the protection of the postman who was attacked on one occasion when entering the front gate. Was W an invitee, licensee or trespasser, and has he any remedy in damages against L, having regard to the notice on the gate before referred to?

A. Our view of the matter is that, inasmuch as W was seeking an interview with the owner of the dogs upon lawful business—the house being provided with a bell and the front gate presumably not locked or otherwise fastened nor apparently supplied with any bell or knocker—W could not be regarded as a trespasser despite the "no admittance" board which in any case was not a warning against the dangerous dogs at large within the curtilage and (apparently) not visible at the time W entered the gate. In these circumstances we should imagine that equipped with the ample evidence of *scienter* indicated W would be likely to recover damages.

When a House is De-controlled by the Act of 1933, s. 1, can a Distress be levied for Arrears of Rent without the Leave of the Court?

Q. 2889. Premises which were controlled by virtue of the Rent and Mortgage Interest Restrictions Act, 1920, have become de-controlled by virtue of the 1933 Act. Notice was duly served on the tenant pursuant to s. 1 (4) of the 1933 Act, requiring possession on 30th September, 1933. No new tenancy has been offered or made, and the tenant remains in possession. Can a distraint be levied for arrears of rent accrued during the period the premises were controlled without applying for leave to distrain? It is submitted that as by virtue of s. 1 of the 1933 Act the provisions of the 1920 Act ceased to apply to the premises, no leave for levying a distress is necessary, and that although the relationship of landlord and tenant has ceased, a distress can be levied pursuant to the Landlord and Tenant Act, 1709, ss. 6 and 7.

A. A dwelling-house de-controlled by s. 2 (2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, ceases to be subject to the Rent Restrictions Acts, and, therefore, is no longer subject to the restriction on the levy of distress for rent contained in s. 6 of the Rent and Mortgage Interest Restrictions Act, 1920. The tenant of such a house is entitled to retain possession until the date specified in a notice served in accordance with the provisions of s. 2 (4) of the Act of 1933, but whether such notice is given or not, the Acts ceased to apply to the house as from the 29th September last (see s. 2 (2)). It therefore appears to be clear that in such a case a landlord can levy a distress for arrears of rent, even though such arrears accrued during the period in which the premises were controlled, without applying for leave to distrain. The case seems to fall within the Landlord and Tenant Act, 1709, ss. 6 and 7. That statute applies where the tenancy has determined by lapse of time, and, probably, where it has determined by notice to quit (Doe d. *David* v. *Williams* (1835), 7 C. & P. 322; "Halsburys' Laws of England," Vol. II, p. 150).

L.P.A., 1925, s. 153 (1) (*b*)—Whether 2d. is a "Rent having no Money Value" or not.

Q. 2890. A client of ours has recently purchased some property at A. Part of this property is freehold but part is leasehold for 1,000 years at the yearly rent of 2d. In an abstract of an indenture of the 18th July, 1815, the term of the leasehold property is referred to in the indenture and in a recital of an indenture of the 8th May, 1790, as "all the remainder of a term of 1,000 years or some other long term of years therein mentioned to have been theretofore granted by the lord or lords of the manor of A, otherwise AM, subject to the payment of the yearly rent of 2d." The date of the commencement of the term cannot be ascertained, and enquiries made show that the rent has not been paid within the knowledge of anyone likely to know of such a payment. Our client proposes to enlarge the term of 1,000 years into a fee simple estate under the powers granted by s. 153 of the Law of Property Act, 1925. There have been four different owners during the last twenty years and some of these owners are now dead, and having regard to this and to the small value of the property it will be a comparatively costly matter to obtain the necessary affidavits to prove non-payment of rent in order to enlarge the term under s. 153, sub-s. (4). Could we safely assume that an annual rent of 2d. is a rent having "no money value" and endorse a memorandum as provided under s. 153, sub-s. (1) (*b*).

A. The exact meaning of the phrase "rent having no money value" (which was also used in C.A., 1881, s. 65) is still obscure. The true test seems to be not whether the reservation is in terms of money, but whether the rent (as such) has any value to a purchaser. It was held in *Chapman* v. *Hobbs* (1885), 29 Ch. D. 1007, that a silver penny had no

such value; in *Re Smith and Stott* (1883), 29 Ch. D. 1009, that a rent of 3s. a year had a money value, and in *Blaiberg* v. *Keeves* [1906] 2 Ch. 175, that a rent of 1s. also had a money value. We are disposed to consider that a rent so small as 2d. is one having no money value, but the matter is (as indicated above) not free from doubt.

Irish Servant and Workmen's Compensation.

Q. 2891. A is a domestic servant employed in London. While chopping wood in the course of her employment, she got a splinter into her finger, which became septic a few days later. Being unable to continue work, she returned to her home in the Irish Free State, and her doctor reports that it will be a long time before she is able to resume work, and that there will probably be some partial incapacity of a permanent nature. Does the fact that A is now resident in the Irish Free State prevent her from (i) claiming compensation (under the Workmen's Compensation Act, 1925), or (ii) receiving a weekly payment? Section 16 of the Act seems to apply to workmen who are receiving a weekly payment before they cease to reside in the United Kingdom, etc.; but it does not specifically apply to workmen who cease to reside in the United Kingdom, etc., before they have received a weekly payment.

A. It is agreed that the above facts do not fall within the Workmen's Compensation Act, 1925, s. 16. An Irishwoman is not an alien, but—even if she were—this would be no disqualification, as a foreigner can claim the benefits of the Act. See *Krzus* v. *Crow's Nest Pass Coal Co., Ltd.* [1912] A.C. 590. The fact of present residence in the Irish Free State, therefore, does not prevent her from (i) claiming compensation, or (ii) receiving a weekly payment. The restriction of payments to quarterly periods only relates to cases under s. 16, which (as stated above) does not apply to the present circumstances. Compare "Extra-Territoriality and Workmen's Compensation" in the "County Court Letter" in our issue of the 4th November, 1933 (77 Sol. J. 776).

Registered Land — Sale — Same Solicitor acting for Vendor and Purchaser—Costs.

Q. 2892. In a purchase for £500 of land registered with an absolute title where the same solicitor acts for vendor and purchaser, is the remuneration £4 10s. according to Table D under the Registered Land Order, 1925, as varied by the Solicitors Remuneration Registered Land Order, 1932, plus £3 3s. under cl. 1 (l) of the Solicitors Remuneration Registered Land Order, 1925? We cannot find the remuneration for acting as the purchaser's solicitors is directed to be one-half of the remuneration prescribed for the solicitors acting for the vendor as is the case under r. 2 applicable to Pt. 2 of Sched. 1 of the general order made under the Solicitors Remuneration Act, 1881. We have set out the above at some length, but the question is, is the proper remuneration £6 15s. or £7 13s.?

A. We agree that there is nothing in the Order of 1925 to indicate that when the same solicitor acts for vendor and purchaser his costs as acting for the latter are to be but half the scale. The opinion of the Council of The Law Society upon the comparable r. 336 of the Consolidated Land Transfer Rules, 1903, 1907 and 1908, was that "The solicitor of a vendor or transferor, of a purchaser or transferee, of a person giving a charge, of a person taking a charge, and of each party giving and taking land under an exchange or partition is . . . entitled to the scale charge in full, *unless he is concerned both for a proprietor of land and a person taking a charge thereon.*" (See Opinion of 2nd November, 1905, para. 717, at p. 291 of the 1923 edition of the Society's "Digest.") We suggest that cl. (1) (l) is not in point being directed to such cases as where the same solicitor acts for more than one party in a capacity not otherwise covered by the Order, e.g., say for a vendor and his chargee concurring in a sale. We suggest, then, that our subscribers' total costs will amount to £9, viz., 15s. per cent. plus 20 per cent. thereof as against each party.

Parliamentary News.

Progress of Bills.

House of Lords.

Agricultural Marketing Bill.
Royal Assent. [21st December.
County Courts (Amendment) Bill.
Read First Time. [21st December.
Edinburgh Corporation Order Confirmation Bill.
Royal Assent. [21st December.
Greenock Corporation Order Confirmation Bill.
Royal Assent. [21st December.
Kirkcaldy Corporation Order Confirmation Bill.
Royal Assent. [21st December.
Ministry of Health Provisional Order Confirmation (Worthing) Bill.
Royal Assent. [21st December.
Newfoundland Bill.
Royal Assent. [21st December.
Public Works Facilities Scheme (Thames Conservancy River Improvement) Bill.
Royal Assent. [21st December.
Public Works Facilities Scheme (Witney Urban District Council) Bill.
Royal Assent. [21st December.

House of Commons.

British Hydrocarbon Oils Production Bill.
Read First Time. [21st December.
Mining Industry (Welfare Fund) Bill.
Read First Time. [21st December.
Ministry of Health Provisional Order (Belper) Bill.
Reported, with Amendments. [20th December.
Ministry of Health Provisional Order (North Buckinghamshire Joint Hospital District) Bill.
Reported, with Amendments. [20th December.

Questions to Ministers.

ANCIENT STATUTES (REVIEW).

Captain Cunningham-Reid asked the Attorney-General what steps are taken to keep under review ancient legislation, and arrange for repeal when such legislation is no longer applicable to modern conditions?

Sir Victor Warrender (Vice-Chamberlain of the Household): I have been asked to reply. The Government Departments concerned consider the revision of legislation which comes within their sphere, while the Statute Law Revision Committee deals with the repeal of legislation that is out of date by reason of later enactments. My right hon. and learned Friend understands that the Lord Chancellor is considering steps to be taken for the review from time to time of such portions of the law as are not dealt with under the above arrangements. [20th December.

Rules and Orders.

The Benefices (Purchase of Rights of Patronage) Rules, 1933. Dated December 15, 1933.

The Rule Committee, as defined by section 9 of the Clergy Discipline Act, 1892,* in exercise of the powers conferred on them by section 8 of the Benefices (Purchase of Rights of Patronage) Measure, 1933,† and all other powers enabling them in this behalf, hereby make the following Rules:—

1. In Rule 5 of the Benefices Rules, 1926,‡ (which prescribes the particulars to be contained in the register of transfers) the following additional paragraph shall be added:—

"(10) the amount of the price (if any) paid for the interest transferred."

2. In Rule 12 of the Benefices Rules, 1926, (which prescribes the fees payable to the registrar of a diocese) the following additional item shall be added:—

"For sending to the council concerned a duplicate of the entry in the register relating to a transfer	2s. 6d."

This fee shall be payable by the council.

3. In the Schedule to the Benefices Rules, 1926—

(*a*) in Form 1, (Register Book (transfers)), an additional column shall be added headed—"Price (if any) paid for Interest Transferred".

* 55 & 56 V. c. 32. † 23 & 24 G. 5. No. 1.
‡ S.R. & O. 1926 (No. 357) p. 234.

(*b*) in Form 3 (application for registration) the following item shall be added before the date :—" Price (if any) paid for Interest Transferred ".

4. Where a council has paid a sum of money to the registrar as a deposit under paragraph (iii) of section 3 of the Measure, the registrar shall, as soon as may be, place the money on deposit so as to earn the current rate of interest payable by banks on deposit accounts.

5. Where a bishop has referred a matter to an arbitrator under Rule 1 of the Second Schedule to the Measure, he shall, as soon as may be, give notice of the name of the arbitrator to the patron and the council.

6.—(1) Where the patron's costs of deducing and proving his title and of and in connection with the conveyance are taxed under paragraph (xiii) of section 3 of the Measure, the costs allowed shall be the remuneration of a vendor's solicitor for deducing title to freehold property and perusing and completing conveyance as regulated by the provisions of the Solicitors' Remuneration Order, 1883,§ as amended by the Solicitors' Remuneration Order, 1932,‖ or any subsequent Order.

(2) In this Rule the Solicitors' Remuneration Order of 1883 means the General Order which was made under the Solicitors' Remuneration Act, 1881,¶ and came into force on the 1st day of January, 1883.

7. Where the patron is entitled to his costs and expenses as certified by the arbitrator under paragraph (x) of section 3 of the Measure, the registrar shall, upon the demand of the patron, pay to the patron out of the deposit and interest in the registrar's hands the certified amount of the patron's costs and expenses, or the whole of the deposit and interest, if they amount to no more than such costs and expenses.

8. Where an arbitrator has made an award and a transfer has been registered under the award the registrar shall pay to the patron the amount of the deposit and interest.

9. Where a council has failed to give notice under paragraph (vi) of section 3 that they desire to proceed with a purchase and the patron has been paid his costs and expenses as certified by the arbitrator under paragraph (x) of that section, the registrar shall pay to the council the amount of the deposit and interest less any sums properly paid by him out of the deposit and interest in pursuance of the Measure or these Rules.

10. The fees set out in the Schedule to these Rules shall be payable as therein prescribed.

11.—(1) In the construction of these Rules the Interpretation Act, 1889,** shall apply in like manner as it applies to an Act of Parliament.

(2) Unless the context otherwise requires, the " Measure " means the Benefices (Purchase of Rights of Patronage) Measure, 1933.

12. These Rules may be cited as the Benefices (Purchase of Rights of Patronage) Rules, 1933.

Dated the 15th day of December, 1933.

Cosmo Cantuar. *A. F. London.*
Sankey, C. *Hewart, C. J.*
William Ebor. *Lewis T. Dibdin.*

SCHEDULE.

TABLE OF FEES.

Item.	*Fee.*
1. On an application to the Bishop to refer a matter to one of the panel of arbitrators .. .. *This fee is to be paid by the applicant to the Bishop's Legal Secretary.*	15s.
2. On payment to the Registrar of a deposit on account of the price .. .. *This fee is to be paid by the Council to the Registrar.*	10s.
3. On an application for the extension of time for agreement of the price or for reference to arbitration .. .. *This fee is to be paid by the applicant to the Bishop's Legal Secretary.*	10s.
4. On an application for taxation .. .. .. *This fee is to be paid by the Council to the Registrar.*	5s.
5. On a taxation by the Registrar for every £2, or fraction thereof	1s.
Minimum fee .. .. *This fee is to be paid by the Council to the Registrar.*	2s.
6. On payment by the Registrar of part of the deposit to the patron .. .. *This fee is to be deducted from the balance of the deposit.*	5s.

§ S.R. & O. Rev. 1904, XI, Solicitor E., p. 1. ‖ S.R. & O. 1932 (No. 940) p. 1631.
¶ 44-5 V. c. 44. ** 52-3 V. c. 63.

Societies.

Solicitors' Managing Clerks' Association.

PASSING-OFF ACTIONS.

A meeting of this Association was held at Lincoln's Inn on 15th December, with Lord TOMLIN in the chair.

Mr. FERGUS MORTON, K.C., lecturing on " Passing-off Actions," suggested that they might be more interesting to laymen than most legal proceedings, as they were free from technicalities, full of human interest, and were heard by a judge alone. They had no implicit connection with patent cases, did not depend on statute, and involved only the decision of the straightforward, common-sense problem of " whether the acts which the defendant has done are such as to deceive, or to be calculated to deceive, persons buying the defendant's goods into the belief that they are buying the plaintiff's goods " (Buckley, L.J., in *Andrew & Co.* v. *Kuehnrich*, 30 R.P.C., at p. 691). Counsel for the plaintiff, in considering what to plead, must decide whether or not to allege fraudulent intent. It was not essential to plead fraud in order to succeed, for likelihood of deception was enough, even if the defendant had acted quite innocently. On the other hand, if the plaintiff proved intent to deceive, he would find it comparatively easy to prove probability of deception. Lindley, L.J., had asked " Why should we be astute to say that the defendant cannot succeed in doing what he is straining every nerve to do ? " (*Slazenger* v. *Feltham*, 6 R.P.C., at p. 538). If a charge of fraud were to be made at the trial, fraud must be pleaded. The difficulty in deciding the question was increased by the fact that the plaintiff did not know what object the defendant had in adopting his course of conduct. Mr. Morton's experience was that if the conduct were in fact calculated to deceive it was usually adopted with that object.

Even though fraudulent intent were proved the plaintiff might lose through failing to show probability of deception (*Claudius Ash* v. *Invicta*, 29 R.P.C., at p. 475), as if the defendant seemed to be a fool as well as a knave. To prove this it was, strictly speaking, not necessary to call persons who had actually been deceived, but it was advisable, and difficult. The court would bear three considerations in mind : the nature of the article sold, the type of person who usually bought it, and the manner in which it was usually bought. When a man bought a motor car he would generally choose and inspect it carefully and be sure what he was getting ; a superficial resemblance in the get-up of two different makes would not deceive him. If, however, he wanted a box of safety matches, he might walk into a tobacconist's, pick up a box of the same general appearance as the brand he preferred, put down a penny, and walk out. The court would generally ask whether the get-up would deceive the ordinary purchaser who was in the habit of buying that particular type of goods in the ordinary manner, without taking any unusual precautions.

Imitations of get-up might consist of a number of acts, none of which by itself would be actionable. The court had to consider the features of the plaintiff's get-up which distinguished his goods in the minds of purchasers from other people's goods (*Dunhill* v. *Bartlett*, 39 R.P.C., at p. 426). A man might be made the defendant to a passing-off action for using after his name letters which denoted some particular distinction or the membership of some particular body when he was not entitled to use them.

DECEITFUL TRADE NAMES.

A large class of cases concerned the wrongful use of a trade name to describe goods sold. The name was sometimes descriptive of the goods and sometimes a fancy word. When the name was descriptive the plaintiff had to show that it had acquired a secondary meaning and had come to denote his goods so that the use of the words by another would be calculated to deceive. The task was extremely difficult but not impossible, as was shown by the " camel-hair belting " case (*Reddaway* v. *Barham* [1896] A.C. 199). The difference between the two kinds of case had been summed up by Lord Shand in *Cellular Clothing Company* v. *Maxton* [1899] A.C. 326. A plaintiff might complain of the name used by the defendant not for his goods but for himself. A man was not always at liberty to trade under his own name, but the court might require him to distinguish his business from an old-established business of the same name. When the defendant was a company less hardship was involved in restraining it from trading under its own name. There was grave ground for suspicion if a new company took a name which might be confused with that of an old-established company (*Manchester Brewery Case* [1899] A.C. 83).

When a direct misrepresentation was made—for instance, a retailer who was asked for A.B.'s toffee supplied X.Y.'s toffee—it was often difficult to obtain evidence. Trap

orders, when properly carried out, were quite a legitimate means of obtaining it, and Mr. Morton considered that they should be called test orders. Sometimes, however, judges of the Chancery Division had expressed themselves forcibly about the methods used. For instance, the trapper might walk into a shop where a small boy was in charge, ask for a bottle of A.B.'s rat poison, and, being handed a bottle of X.Y.'s rat poison, the only type in the shop, pay for it and walk out again without comment. Technically the youth might have passed-off, but an action launched on this kind of evidence only might be a real hardship to a small trader, and would probably not be regarded with favour by the court.

Gray's Inn Debating Society.

The eighteenth meeting of the year was held in the Common Room, Gray's Inn, at 8.15 p.m., on Thursday, 23rd November, the President being in the chair. A debate took place on the motion "That restrictions on the employment of married women are detrimental to the public welfare." This motion was proposed by Dr. Letitia Fairfield, C.B.E. (a visitor), after the President had briefly introduced and welcomed her. It was opposed by Mr. R. Ives. Mr. H. W. N. Betuel spoke third and Mr. L. Lieven spoke fourth. On the motion being thrown open to the house, Mr. Harley Mould, Capt. O. H. Cooke, M.C. (a visitor), Col. E. T. Rich, C.I.E. (a visitor), and Mrs. Thomas Terrell (a visitor) spoke in favour of the motion, and Mr. Thomas Terrell, Mr. Campbell Prosser, Mr. T. D. FitzGerald, Mr. H. S. Herbert and Mr. Eric Walker against it, after which the proposer replied. The motion was carried by thirteen votes to six, the number of members and guests present being thirty-eight. A hearty vote of thanks to Dr. Fairfield was proposed by Mr. J. W. J. Cremlyn (ex-President), seconded by Miss L. Vivian, and carried by acclamation, to which Dr. Fairfield briefly replied.

The Annual Dinner was held at the Hotel Metropole at 8 p.m., on Thursday, 30th November, the President being in the chair. After the loyal toast had been drunk, Master Sir Albion Richardson, C.B.E., K.C., representing the Benchers of Gray's Inn, proposed the toast of "The Gray's Inn Debating Society," to which Capt. F. J. Parker (President) responded. The toast of "The Guests" was then proposed by Mr. J. Reginald Jones (ex-President), and Sir Nicholas Grattan-Doyle, M.P., spoke in response. Dancing took place after dinner until 1 a.m., the music being provided by Newman's Band.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 5th December, (Chairman, Mr. A. L. Ungoed-Thomas), the subject for debate was: "That the case of *Lavell & Co. Ltd.* v. *A. & E. O'Leary* [1933] 2 K.B. 200, was wrongly decided." Mr. E. M. Woolf opened in the affirmative. Mr. R. D. C. Graham opened in the negative. Mr. C. J. de S. Root seconded in the affirmative. Mr. J. G. Clarfelt seconded in the negative. The following members also spoke: Mr. J. A. Brightman, Miss H. M. Cross, Messrs. W. M. Pleadwell, S. Samson, J. R. Campbell Carter and K. M. Trenholme. The opener having replied, and the Chairman having summed up, the motion was lost by four votes.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 12th December (Chairman, Mr. B. W. Main), the subject for debate was "That in the opinion of this House an individual is entitled in any circumstances to refuse to fight for his country." Dr. E. G. M. Fletcher opened in the affirmative. Mr. W. S. Jones opened in the negative. The following also spoke: Messrs. E. F. Iwi, C. E. Lloyd, L. J. Frost, J. F. Chadwick, T. M. Jessup, J. H. G. Buller, R. S. W. Pollard, M. Foulis, P. Crawford Smith, E. R. Fisher, W. M. Pleadwell, E. C. Durham, K. M. Trenholme and J. E. Terry. The opener having replied, the motion was carried by one vote.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 19th December (Chairman, Mr. R. S. W. Pollard), the subject for debate was "That the case of *Gilford Motor Co. Ltd.* v. *Horne* [1933] Ch. 935, was wrongly decided." Mr. J. H. G. Buller opened in the affirmative. Mr. M. R. Hoare opened in the negative. Mr. M. Foulis seconded in the affirmative. Mr. N. A. M. Sitters seconded in the negative. The following also spoke: Messrs. J. R. Campbell Carter, D. Newman, K. M. Trenholme, P. W. Iliff, E. C. Durham. The opener having replied, and the Chairman having summed up, the motion was carried by one vote. The next meeting will be on Tuesday, 9th January, 1934.

Institute for the Scientific Treatment of Delinquency.

Sir Herbert Samuel presided at an "At Home" of this institute, held in the house of Sir Alexander and Lady Kleinwort, 30, Curzon-street, W.1, on 7th December. He said that modern ideals demanded a more rational and humane treatment of crime, and that the institute was being founded to co-ordinate the work of psychological investigators in this and other countries and to provide facilities for the treatment and examination of offenders and for research. He enumerated some of the great measures of penal reform in the passing of which he had been associated with the then Mr. Herbert Gladstone—the Probation Act, the Children Act, 1908, the establishment of the Borstal system, and the measures which reduced the frequency of imprisonment in default of payment of fines. Dr. W. Langdon Brown, Regius Professor of Medicine in Cambridge University, gave a detailed description of the manner in which certain defects of the pituitary and thyroid glands could create an inveterate offender, and in which a wrong mental attitude adopted in childhood or inherited could pervert the conduct of a person through life. Dr. Hadfield described the types of offender in which the institute was chiefly interested; the sexual exhibitionist and pervert, the thief, the shop-lifter, and the delinquent who suffered from an abnormal function of the endocrine glands or from epilepsy. The institute would, he said, extend its study to all criminals in an effort to find out the deep-seated reasons for their anti-social tendencies.

Dr. John Rickman said that the institute made no claims or promises but merely hoped to be allowed to help magistrates and other interested persons with its special scientific knowledge, by reporting on offenders and advising on problems. It desired to establish a clinic with a library and offices and later possibly to open branches in the provinces.

In the ensuing discussion Mr. Claud Mullins observed that a detailed and skilful diagnosis without treatment would only increase the magistrate's perplexity. A speaker who had founded a similar movement in Australia advised the institute to organise monthly conferences with magistrates, and other speakers stressed the need for the institute to approach magistrates in order to impress on them the existence of its knowledge and induce them to consult it. Mrs. Le Mesurier said that although she and her staff were prepared to give detailed reports on any boy sent to Wormwood Scrubbs, a report was only requested in about two out of every ten cases.

The Law Society's School of Law.

The Spring Term will open on 3rd January. Lectures will commence on 8th January. Copies of the detailed Time-Table can be obtained on application to the Principal's Secretary.

The Principal (Mr. G. R. Y. Radcliffe) will be in his room to advise students on their work on Wednesday, 3rd January (students whose surnames commence with the letters A–K), and Thursday, 4th January (students whose surnames commence with the letters L–Z), from 10.30 a.m. to 12.30 p.m., and from 2 p.m. to 5 p.m.

The subjects to be dealt with during the Term will be, for Intermediate students (i) Public Law, (ii) the Law of Property in Land, (iii) Contract and Tort, and (iv) Trust Accounts. The subjects for Final students will be (i) Conveyancing and Probate, (ii) Criminal Law, Private International Law, and Divorce, and (iii) Sale of Goods and Insurance.

There will also be courses on (i) Conveyancing, (ii) Contract, and (iii) Jurisprudence, for Honours and Final LL.B. students, and on (i) Constitutional Law, and (ii) Roman Law, for Intermediate LL.B. students.

Intermediate students must notify the Principal's Secretary before 4th January, on the entry form, whether they wish to take morning or afternoon classes.

Students can obtain copies of the regulations governing the three Studentships of £40 a year each, offered by the Council for award in July next, on application to the Principal's Secretary.

The Derby Law Society.

The Annual Meeting of the Derby Law Society was held on the 7th December. The following officers were elected: President, Mr. C. S. Bowring, Derby; Vice-President, Mr. F. E. Moult, Derby; Treasurer, Mr. Bendle W. Moore, Derby; Hon. Secretary, Mr. A. J. Robotham, Derby.

Legal Notes and News.

Honours and Appointments.

Mr. R. F. JONES, solicitor, of Anglesey, has been appointed Magistrates' Clerk for the Anglesey No. 1 Petty Sessional Division in succession to the late Mr. S. R. Dew. Mr. Jones was admitted a solicitor in 1927.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Joseph Thornthwaite Jackson, solicitor, of Devizes, left estate of the gross value of £9,455, with net personalty £9,382. He left £100 to his cashier and confidential clerk, Charles David Heginbotham and £50 to his shorthand-typist, Bessie Maude Wilkins.

Mr. William Henry Whitfield, solicitor, of Wimbledon, left estate of the gross value of £20,413, with net personalty £20,134.

Mr. Edward Thomas Ward, J.P., barrister, of Folkestone, left estate of the gross value of £53,863, with net personalty £53,722. He left: £500 to the Royal National Mission to Deep Sea Fishermen; £500 to the Gordon Boy's Home, Woking.

HOLKER LAW SCHOLARSHIP.

A Holker Senior Scholarship of £200 a year for three years has been awarded to Mr. John Megaw, B.A., LL.B., of St. John's College, Cambridge, a student of Gray's Inn.

LONDON SOLICITORS' GOLFING SOCIETY.

In the final round of the London Solicitors' Golfing Society's Ellis Cunliffe Vase at Walton Heath, F. Gordon Petch (handicap 2) beat F. R. E. Thairlwall (1) by one hole.

BOROUGH OF WALSALL.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 11th day of January, 1934, at 10 o'clock in the forenoon.

ACQUISITION OF LAND ACT.

CLIENTS' COSTS.

The Official Arbitrator has in the past assessed the applicants' costs in his award and at a figure often wholly inadequate and appreciably less than would be allowed on taxation. It is understood that representations have been made by The Law Society, and it is therefore of much interest to solicitors to learn that in his award dated the 11th December Mr. John Willmot in the reference *Exmouth U.D.C.* v. *Brooks* awarded, *inter alia*, the acquiring authority to pay the costs of the claimant in connection with the arbitration, such costs to be taxed by a taxing officer of the High Court of Justice, King's Bench Division.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 11th January, 1934.

	Div. Months.	Middle Price 27 Dec. 1933.	Flat Interest Yield.	†Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110⅜	3 12 3	3 6 6
Consols 2½%	JAJO	74	3 7 7	—
War Loan 3½% 1952 or after	JD	101	3 9 4	3 8 7
Funding 4% Loan 1960-90	MN	111⅜	3 11 7	3 6 5
Victory 4% Loan Av. life 29 years	MS	110½	3 12 5	3 8 6
Conversion 5% Loan 1944-64	MN	116¼	4 6 0	3 1 8
Conversion 4½% Loan 1940-44	JJ	108½	4 2 11	3 0 7
Conversion 3½% Loan 1961 or after	AO	101¾	3 8 10	3 7 11
Conversion 3% Loan 1948-53	MS	98½	3 0 11	3 2 2
Conversion 2½% Loan 1944-49	AO	92½	2 14 1	3 2 9
Local Loans 3% Stock 1912 or after	JAJO	87	3 9 0	—
Bank Stock	AO	347½	3 9 1	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78	3 10 6	—
India 4½% 1950-55	MN	108	4 3 4	3 16 6
India 3½% 1931 or after	JAJO	86½	4 0 11	—
India 3% 1948 or after	JAJO	74	4 1 1	—
Sudan 4½% 1939-73	FA	112	4 0 4	1 19 0
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 11 years	MN	101	2 19 5	—
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	108	4 12 7	4 2 9
*Canada 3½% 1930-50	JJ	98½	3 11 1	3 12 4
*Cape of Good Hope 3½% 1929-49	JJ	100	3 10 0	3 10 0
Natal 3% 1929-49	JJ	95	3 3 2	3 8 8
New South Wales 3½% 1930-50	JJ	96	3 12 11	3 16 5
*New South Wales 5% 1945-65	JD	108	4 12 7	4 2 9
*New Zealand 4½% 1948-58	MS	107	4 4 1	3 16 9
*New Zealand 5% 1946	JJ	109	4 11 9	4 0 9
*Queensland 4% 1940-50	AO	101	3 19 2	3 16 8
*South Africa 5% 1945-75	JJ	112	4 9 3	3 14 9
*South Australia 5% 1945-75	JJ	108	4 12 7	4 2 9
*Tasmania 3½% 1920-40	JJ	99	3 10 8	3 13 9
Victoria 3½% 1929-49	AO	97	3 12 2	3 15 0
*W. Australia 4% 1942-62	JJ	100	4 0 0	4 0 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	85	3 10 7	—
*Birmingham 4½% 1948-68	AO	112	4 0 4	3 9 3
*Cardiff 5% 1945-65	MS	111	4 10 1	3 16 9
Croydon 3% 1940-60	AO	94	3 3 10	3 7 1
*Hastings 5% 1947-67	AO	115	4 6 11	3 10 10
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	73	3 8 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86	3 9 9	—
Manchester 3% 1941 or after	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 2 11
Metropolitan Water Board 3% "A" 1963-2003	AO	88	3 8 2	3 9 2
Do. do. 3% "B" 1934-2003	MS	89½	3 7 0	3 7 10
Do. do. 3% "E" 1953-73	JJ	95xd	3 3 2	3 4 6
*Middlesex C.C. 3½% 1927-47	FA	102	3 8 8	—
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable	MN	86	3 9 9	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16 2
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	108½	3 13 9	—
Gt. Western Rly. 5% Rent Charge	FA	124½	4 0 4	—
Gt. Western Rly. 5% Preference	MA	110	4 10 11	—
‡L. & N.E. Rly. 4% Debenture	JJ	104xd	3 16 11	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	95½	4 3 9	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	104xd	3 16 11	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	98	4 1 8	—
Southern Rly. 4% Debenture	JJ	107xd	3 14 9	—
Southern Rly. 5% Guaranteed	MA	121½	4 2 4	—
Southern Rly. 5% Preference	MA	108½	4 12 2	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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